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*Attorneys for Plaintiffs Timothy DuFour and
Kenneth Tanner, on their own behalves
and on behalf of all others similarly situated,*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

TIMOTHY DuFOUR and KENNETH
TANNER, individuals, on their own behalves
and on behalf of all others similarly situated,

Plaintiffs,

v.

BE., LLC, DYNAMIC SHOWCASES, LLC,
California limited liability companies,
MONTEREY FINANCIAL SERVICES, INC.,
MTS HOLDINGS GROUP, INC., California
corporations, 1901 CO., a Nevada corporation,
BE MARKETING LIMITED, a private limited
company registered in England and Wales,
ERIK DeSANDO, BARRY FALCK, JACOB
STEINBECK, VITALY RASHKOVAN, and
DOES 1-100, inclusive,

Defendants.

No. 09-03770-CRB

Judge Charles R. Breyer

**DECLARATION OF TIMOTHY
DuFOUR IN SUPPORT OF
PRELIMINARY INJUNCTION**

Date: November 6, 2009
Time: 10:00 am
Location: Courtroom 8, 19th Floor
450 Golden Gate Ave.
San Francisco, CA 94102

Timothy DuFour hereby declares:

1. My name is Timothy DuFour. I am over the age of eighteen and am fully competent to make this declaration. I make this declaration based upon personal knowledge.
2. In late February, my wife and my daughter encountered one of Be., LLC's

1 salespeople in a mall. The salesperson invited my daughter to participate in a Be., LLC
2 screentest. Shortly thereafter, my wife, my daughter, and I attended this screentest. After the
3 initial encounter and particularly after the screentest, my daughter would frequently discuss
4 her plans to get into show business and the possibility of earning money as a professional
5 actress and/or model with great excitement after this interaction.
6

7 3. On March 7, 2009, my wife, my daughter, and I had a third meeting with Be.,
8 LLC's salespeople. During this meeting, Be., LLC's salespeople pitched and marketed Be.,
9 LLC's services to us (and particularly to my daughter). In this sales pitch, the main selling
10 point of Be., LLC's services was that it would provide access to auditions with talent agents,
11 who could then secure professional employment as an actress or model for my daughter. At
12 this third meeting, my wife and I signed a contract with Be., LLC. A true and correct copy of
13 this contract is attached to this Declaration as Exhibit A, except that my counsel has redacted
14 certain private information. The contract purports to provide "discounts" on the fees charged
15 by Be., LLC's service providers, including a "discounted" \$50 "Showcase Registration Fee."
16 The contract also states: "We are an entertainment company that offers a membership
17 comprised of a collection of resources, discounts and a support system designed to help
18 individuals get started on a pathway to success." The contract also states: "Purchaser
19 acknowledges and agrees that none of the offerings of be. [sic] include any promise or
20 guarantee of employment in the entertainment industry, whether oral or written, expressed or
21 implied."
22

23 4. At the third meeting, we received an instructions manual and a promotional
24 pamphlet. A true and correct excerpt of this instructions manual is attached to this Declaration
25 as Exhibit B. A true and correct excerpt of the promotional pamphlet is attached to this
26 Declaration as Exhibit C. The pamphlet indicates the evaluation offered in connection with the
27 Talent Showcases was "PRICELESS."
28

5. Within a day or two after the March 7 meeting, I read the instruction manual.
The instruction manual and Exhibit B state:

Agents, managers and casting directors are always looking for new talent. Talent showcases are your opportunity to interview with several of these professionals at once with the goal of gaining representation. Showcases give you a chance to experience a real audition. You will gain access to and benefit from the opinions of top industry professionals. Each showcase has a \$25 registration fee. . . . DYNAMIC SHOWCASES wants every member to have a chance to acquire an agent! . . . DYNAMIC SHOWCASES works with top agents and managers, helping in the showcase process of thousands of kids in the industry.

The instruction manual was consistent with the representations made by Be., LLC's salespeople.

6. Within two or three days after the March 7 meeting, I reviewed the website at <http://gonnabe.com>. The representations about Be., LLC's services on the website were consistent with the representations made by Be., LLC's salespeople.

7. The purposes my daughter and I retained Be., LLC's services were (1) to have my daughter participate in a "showcase" or audition with a talent agent, in order to obtain representation for my daughter that would provide her with gainful employment as a professional actress or model and income from the same; and (2) to receive any career advice or assistance necessary for my daughter to obtain such representation. If Be., LLC had disclosed that the "Showcase Registration Fee" violated California law, I would not have agreed to pay Be., LLC for its services. If Be., LLC had disclosed that California law required it to refund fees for services that it promised to perform and which were not performed, I would have asked for a refund. Be., LLC has not provided my daughter with a successful audition and my understanding is that Be., LLC has shut down its Tarzana office where the showcases took place. My daughter has never received any income as a professional actress or model, or any other income from the entertainment industry.

8. I made an initial payment to Be., LLC of \$375 shortly after signing the contract. Monterey Financial Services, Inc. withdrew four monthly payments of \$375 from my bank account for April, May, and June via my debit card. In June 2009, I canceled Monterey's authorization to debit fees from my bank account. Beginning in or about July 2009, Monterey began to call me and my family regularly to demand that I continue to pay under my contract

1 with Be., LLC. At some point, my family demanded that Monterey produce the signed contract
2 between myself and Be., LLC, and Monterey sent us such a signed contract within a few days.

3 9. I became disabled while I was employed as a mechanic. I am on state
4 disability and I am not employed. Although my wife has continued to work at her job, my
5 family cannot realistically afford more than a \$1,000 bond for the injunctive relief requested in
6 the Motion.

7 10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
8 foregoing is true and correct.

9
10 *Pursuant to Section X of the Northern District of California's General Order No. 45 on*
11 *electronic case filing and 28 U.S.C. § 1746, in lieu of Timothy DuFour's signature on this*
declaration, Ethan Preston attests that Timothy DuFour is the signatory of this declaration,
and that Timothy DuFour concurred to this declaration on September 29, 2009.

12 Dated: September 29, 2009

By: s/Ethan Preston

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EXHIBIT A

be

We are an entertainment company that offers a membership comprised of a collection of resources, discounts and a support system designed to help individuals get started on a pathway to success.

be AGREEMENT

Corporate Headquarters
5900 Hollis Street, Suite R2, Emeryville, CA 94608 Tel: (510) 899-6780 www.connatbe.com

Contract date: 3/7/2009

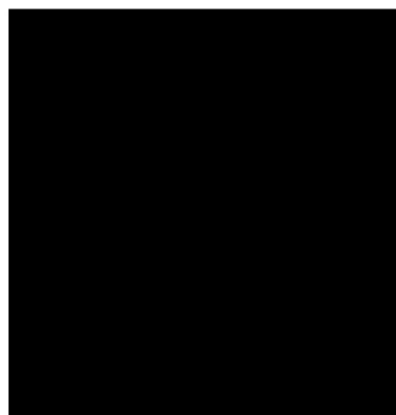
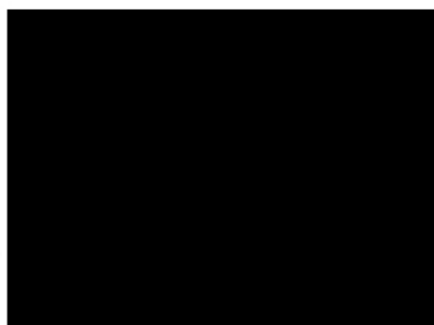
CHILD
INFORMATION

[Redacted]

PARENT/
GUARDIAN

First Name: Tim ✓

Last Name: DuFour



MEMBERSHIP

Membership Package: Movie Star

Form of Payment: 8 Pay

Check or CC # _____ / ****-****-****-0017

Price: \$3,000.00 Down Payment: \$375.00 Payment Plan: 8 Pay

Membership is valid for 5 years. Expiration Date: 3/6/2014

Ongoing Training: _____ Amount Financed: _____

\$25 fee on any NSF or "Stop Pay" check or declined credit/debit card payment. Maximum interest allowable by law will be charged on unpaid balances until collected.

By initiating below, I understand that the following discounted fees are required when attending workshops, photo shoots, and showcases from be service providers and are subject to change. These prices are per child.

Initial ☒ * \$25.00 Instructor Fee per Acting Workshop
☒ \$75.00 for 50 Duplicate Photos
☒ ~~\$25.00~~ Showcase Registration Fee \$50.00
☒ \$50.00 Word of Mouth Marketing
☒ \$30.00 Ongoing Acting Workshop (per workshop)
☒ \$25.00 Singing Program Workshop (per workshop)
☒ \$25.00 Dance Program Workshop (per workshop)
☒ \$25.00 Modeling Program Workshop

Purchaser acknowledges and agrees that none of the offerings of be include any promise or guarantee of employment in the entertainment industry. Whether oral or written, expressed or implied. Parent/Guardian Initials X ☒

Our cancellation policy complies with section 1689.22 of the California Seminar Sales Act. You, the buyer, may cancel this transaction in writing by fax, email or post without any penalty or obligation, within three business days from the date of this transaction. See the Notice of Cancellation form on the reverse side for complete instructions for canceling. We will respond within 10 days following the notice by the Buyer of Cancellation. For inquiries, disputes, complaints, or if you have questions about returns, please call you local be office.

Parent/Guardian/Buyer signature(s) acknowledge and accepts the cancellation policy as stated above and the backside of this document.

Phyllis DuFour
 (be, Parent/Guardian) Print Name
JEANNE DUFOR
 (Parent/Guardian) Print Name
JEANNE DUFOR
 (Buyer) Print Name

[Signature]
 (Parent/Guardian) Signature
[Signature]
 (Buyer) Signature

(Date) 3/7/09 be sends emails with newsletters, updates, and specials. Please check here if you would like not to receive these emails. _____

ACCOUNTING COPY

Notice of Cancellation

Transaction Date: _____

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. Business days are Monday through Friday excluding holidays.

If you cancel, any property traded-in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller, in substantially as good condition as when received, any goods delivered to you under the contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, a fee of \$25.00 per information referral kit and \$25.00 Be. Bag will be deducted from any potential refund.

(Buyer's Name)

(Child's Name)

Cancellation Policy

Cancellation will be accepted upon your mailing, faxing, or hand-delivering, within three business days from the transaction date, a signed and dated copy of this

cancellation notice to your local Be. office.

Please see your Talent Director's card for local address and / or fax number.

Refund Policy

You will be eligible to receive a refund upon you completing the above cancellation step and returning the information / referral kit via mail or hand delivery.

Reason of Cancellation:

I, _____

(Buyer's Signature)

hereby cancel this transaction on (Date) _____

For inquiries, disputes, complaints, or if you have questions about cancellations, please call you local Be. office.

Note: When sending the information / referral kit by mail, It is recommended that buyer send it by Certified Mail, so that the buyer's name is included in or on the package to insure proper account is credited.

Please call your local Be. Office for their business hours. Cancellation requests, information/referral kit, and Be. Bag returns may be hand delivered by appointment only with your Talent Director.

Cancellations after 3 days will be at the sole discretion of Be.

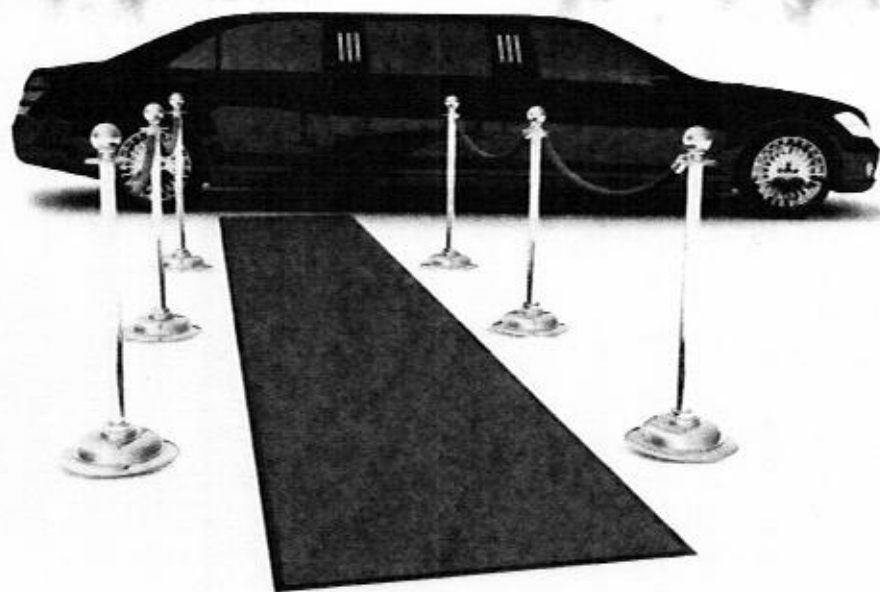
FOR OFFICE USE ONLY

Information Referral Kits Received By _____

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EXHIBIT B

4th Step Showcase Evaluation



be

Your Time to Shine

SHOWCASE EVALUATION

You have now completed the boot camp acting classes and are ready to be evaluated by Hollywood as well as local agents, managers, and casting directors. One of the most exciting aspects of this program is our state-of-the-art video conferencing system. All the Los Angeles-based agents, managers, casting directors, and industry professionals will gather in Southern California. Be. members will get to meet the best agents in Hollywood without leaving your local Be. office! These agents complete a thorough evaluation of your child's talent and email it to you, stating your child's strengths and the actions that need to be taken in order to be represented up by a manager or agent.

Agents, casting directors and managers are always looking for new talent. Talent showcases are your opportunity to interview with several of these professionals at once with the goal of gaining representation. Showcases give you a chance to experience a real audition. You will gain access to and benefit from the opinions of top industry professionals. Each showcase has a \$25 registration fee.

How to Prepare: DIRECTIONS

- Call the Be. Hotline for the next showcase date. The Hotline will be provided by the scheduling department
- Make 5 copies of the submission form (front of talent kit) on 110 lbs. white paperstock.
- Remember to include a photo.
- Send/Drop off to Be. office 2 weeks in advance.
- Prepare a short, one-minute monologue or commercial script.
- Practice, practice, practice! Watch yourself in front of the mirror, or have Mom and Dad tape you.
- Each artist will audition individually. Sorry parents, you aren't allowed to watch the audition.
- These evaluations will be mailed to you.
- The agents will personally contact you if they are interested in representation.
- Remember your lines.
- Bring a smile.
- HAVE A BLAST!!



After the Showcase

- Agents and managers will offer helpful tips for improvement via mail.
- You can take this valuable feedback to your ongoing classes with Rising Stars.
- A customized class can be designed for you based on individual need.
- If you need clarification regarding the evaluation forms bring them to class with you, and your instructor will gladly explain them to you.
- If you do not receive an offer of representation, DON'T PANIC! Often times, it can take years of training, feedback, and showcasing - perseverance is the key to this business.
- DYNAMIC SHOWCASES wants every member to have a chance to acquire an agent!

DYNAMIC SHOWCASES works with top agents and managers, helping in the showcase process of thousands of kids in the industry.



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EXHIBIT C

